THE HON'BLE SRI JUSTICE P.S.NARAYANA

Writ Petition No.26774 of 2006

Date: 22nd December, 2006

Between :-

M/s.BNR Constructions (A partnership firm)
H.No.129/2RT, S.R.Nagar, Hyderabad
Rep. By its Managing Partner B.Veeraiah ..
Petitioner

And

Municipal Corporation of Hyderabad,
Tank Bund, Hyderabad rep. by
its Commissioner and another
..Respondents

THE HON'BLE SRI JUSTICE P.S.NARAYANA

Writ Petition No.26774 of 2006

ORDER:-

Heard Sri Narasimha Rao, the Counsel representing the petitioner and Smt.Jyoti Kiran, the learned standing Counsel who had taken notice on behalf of R.1 and R.2.

2. The Writ Petition is filed for a Writ of Mandamus declaring the notice in Lr.No.UC/621/1091/1/7/W7/C5/TPS/MCH/2006, dt.15-12-2006, issued by the 2nd respondent as illegal, arbitrary and contrary to law and consequently direct the respondents and their employees not to interfere with the construction of the building in premises No.7-1-621/109, S.R.Nagar, Hyderabad as long as the construction is in accordance with the approved plan and pass such other suitable orders.

3. The said notice dt.15-12-2006 reads as hereunder:-

MUNICIPAL CORPORATION OF HYDERABAD

Office of the assistant City Planner,
Town Planning Section, Circle V,
Khairatabad, Hyderabad

Lr.No.UC/621/1091/1/7/W7/C5/TPS/MCH/2006
Dt.15-12-2006

To
Sri Veeraiah,

H.No.7-1-621/109 (601/M2),
Sanjeeva Reddy Nagar,
Hyderabad

Sir,

Sub:- MCH – T.P.Section – Circle No.5 – Unauthorised digging for cellar floor at premises No.7-1- 621/109, SR Nagar, Hyderabad – Closing of Cellar – Reminder – Regarding.

Ref:- 1. Permit No.48/87, dt. 31-12-2005 in file No.374/CSC/TP5/2005.
2. This Office Lr.No.UC/621/109/1/7/27/C5/2006
3. Your representation dt.16-9-2006

-: o0o :-

In the reference 1st cited, you have obtained permission for construction of Ground+3 upper floors. You have started the construction without issuing notice U/s.440 of HMC Act and started excavating the ground with an intention to construct a Cellar floor for which this office has informed you vide reference 2nd cited to stop the unauthorized excavation of Cellar. In response to this office instructions, you have submitted the explanation vide reference 3rd cited, the same has been examined and found that are no merits. But again you are excavating the earth with an intention to lay the Cellar unauthorizedly.

Therefore, you are hereby once again directed to stop further excavation and fill the same immediately, failing which further action will be initiated as per the provisions of the Act, and you will be held responsible if any damages occurred to neighbours and labour.

Yours faithfully,
Sd/-
Assistant City Planner,
Circle No.5, MCH.

4. It is stated that the petitioner is the absolute owner and possessor of the property bearing No.7-1-621/109 admeasuring 482.77 sq.yds., situated at S.R.Nagar, Hyderabad. It is also stated that the petitioner purchased the said property through registered sale deed dt.4-11-1999 and thereafter the respondent Corporation had granted permission vide permit No.48/87 in file No.0374/CSC/TP-5/2005 dt.31-12-2005 and the petitioner had started excavation work basing on the permission granted by the respondent Corporation. While matter stood thus, respondent No.2 issued notice on 5-9-2006 with grave allegations. The petitioner submitted a reply on 16-9-2006 through his explanation. Again the respondent Corporation issued notice dt.15-12-2006 without considering the representation submitted by the petitioner. The respondents and their employees are interfering with the excavation work of the area. The main grievance of the petitioner is that at this stage, the 2nd respondent cannot arrive at a conclusion that the excavation is unauthorized for the purpose of Cellar. The Counsel also would maintain that if there is any deviation

of the construction from the approved plan, at the appropriate time the procedure as contemplated by the Hyderabad Municipal Corporation Act, 1955, may be followed.

5. In view of the facts and circumstances explained in detail, this Court is of the considered opinion that the issuance of the impugned order at this stage cannot be sustained and the same is hereby set aside. But however the respondents are at liberty to initiate action in accordance with law in the event of the petitioner proceeding with the further construction in deviation of the approved plan. Subject to the liberty specified supra, the Writ Petition is accordingly allowed to the extent indicated above. No order as to costs.

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Justice P.S.Narayana

22nd December, 2006

Note: Operative portion of the order by wire at party's costs.

(B/o.smr)